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(1921-2000)

December 19, 2005

The Honorable Charles L. A. Terreni  
Executive Director  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, SC 29211

**DELIVERED BY HAND**

Re: Generic Proceeding to Explore a Formal Request for Proposal for Utilities that are  
Considering Alternatives for Adding Generating Capacity  
Docket No. 2005-191-E  
Our File No. 05-7051

Dear Mr. Terreni:

Enclosed are the original and sixteen copies of the Post-Hearing Brief of LS Power Associates, L.P. Would you please file the original, returning a clocked copy to me by way of our courier.

By copy of this letter I am serving all counsel of record.

Very truly yours,

WOODWARD, COTHRAN & HERNDON



Darra W. Cothran

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DWC/bjd

Enclosures.

cc: Len S. Anthony, Esquire  
Kendal Bowman, Esquire  
Richard L. Whitt, Esquire  
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<sup>1</sup> Testimony of Samuel S. Waters of Progress Energy Carolinas, Janice D. Hager of Duke Power, Stephen M. Cunningham of South Carolina Electric & Gas Company, and Julius A. Wright of J.A. Wright & Associates.

competitive wholesale marketplace in which South Carolina electric utility customers are assured the best possible deal in terms of price, risk, reliability, and environmental performance, LS Power urges the Commission to adopt competitive solicitation rules featuring a fair, open and transparent process that is well-defined with standardized evaluation criteria and independent, third-party oversight.

### **III. DISCUSSION**

Parties to this proceeding have asserted there is “no problem” with South Carolina’s existing resource planning and selection process, that the process is “not broken”, and “the system we have now has served this state very, very well”<sup>2</sup>. Some of these parties have also stated that independent power producers (“IPPs”) believe South Carolina’s utilities “can’t be trusted to do the right thing”<sup>3</sup> and that “the Commission can’t be trusted to find out when the utilities are behaving badly”<sup>4</sup>. The question is not whether South Carolina and its ratepayers have been served well by its existing system, but rather if competitive solicitations can serve the state’s ratepayers even better.

#### **A. A COMPETITIVE TEST IS THE MOST USEFUL TOOL IN ENSURING THE BEST DEAL FOR RATEPAYERS.**

Competitively testing and evaluating the reasonableness of utility self-build proposals against non-utility proposals under an RFP process is the most effective means to determine whether the needs of South Carolina ratepayers are met reliably and at the lowest-cost. In such a process, the key elements of transparency, product definition,

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<sup>2</sup> Len S. Anthony, representing Progress Energy Carolinas, Before the Public Service Commission of South Carolina, Docket No. 2005-191-E, Hearing #10732, Transcript of Testimony and Proceedings, Page 21, (October 26, 2005) (“Anthony Comments”).

<sup>3</sup> *Id.* at Page 20.

<sup>4</sup> *Id.*

standardized evaluation criteria, and independent oversight are necessary to assure the credibility of the RFP process.

Without an unbiased competitive procurement process that evaluates the broadest spectrum of marketplace options, there can be no assurance that a utility generating proposal is the best, lowest-cost, and most reliable choice for ratepayers. By its nature, competition encourages participants to lower costs, while increasing efficiency and reliability. LS Power is not recommending utility self-build options be foreclosed from consideration in an RFP. Yet if a utility self-build is ultimately selected, ratepayers can be reasonably assured they are receiving the lowest-cost, most reliable generation if the self-build has been compared to other options in the marketplace. Such an outcome would presumably be an improvement to the status quo in South Carolina where there is no requirement for the utility to review all marketplace options when procuring new generation.

**B. IT IS NOT A QUESTION OF TRUST, IT IS A QUESTION OF FAIR COMPETITION.**

In response to the idea that an RFP process implies the utilities and the Commission cannot be trusted “to do the right thing” in the resource procurement process, LS Power believes there are actually two distinct issues in question. First, LS Power does not believe a mandatory RFP process demonstrates utilities cannot be trusted to make prudent resource acquisition decisions. It is not an issue of trust in the utility or lack thereof. Rather, the goal of an RFP process is to ensure every resource procured is the lowest-cost, most reliable option for ratepayers. For reasons previously stated, an RFP process is the best means of ensuring the lowest-cost, most reliable option is selected to meet the forecasted need. Moreover, if considering a self-build, utilities will

have an inherent preference for their own project. To avoid the presumption that a utility self-build is inevitable and encourage a more robust universe of competing proposals, independent oversight is imperative in an RFP process.

To that end, IPPs have the utmost confidence in the Commission and believes the Commission or its advisors would be the model of independent, third-party oversight within an RFP process. LS Power rejects claims that its testimony was a “criticism of the Commission”<sup>5</sup> or that LS Power lacks trust in the Commission. The intent of an RFP process is not for an outside party to usurp the Commission’s authority. To the contrary, LS Power encourages the Commission to take an active role in overseeing the RFP process and assuring that resource additions are procured via a fair, transparent, well-defined process for the benefit of the ratepayers. If the Commission elects not to take the lead role in overseeing the RFP process, it may choose to coordinate oversight efforts with the Office of Regulatory Staff or an independent consultant. Either way, due to the potential for conflict of interest issues – real or presumed – the utility should not act as the evaluator in an RFP process.

#### **C. AN RFP PROCESS ENCOURAGES DEVELOPMENT OF COMPETITIVE SUPPLY OPTIONS.**

With a fair, open, well-defined and transparent RFP process featuring independent, third-party oversight, developers will have sufficient confidence in the procurement process to dedicate resources required to develop alternatives and participation will increase, providing a wider range of marketplace options to serve ratepayers. LS Power takes exception to intervenors citing poor responses to previous

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<sup>5</sup> Samuel S. Waters, Before the Public Service Commission of South Carolina, Docket No. 2005-191-E, Rebuttal Testimony, Page 9, (October 12, 2005).

RFPs in their territories as reasons why South Carolina should not change its resource procurement rules. In his direct testimony, Samuel Waters of Progress Energy Carolinas noted his company recently issued an RFP which did not receive a single response and argued “This result certainly does not indicate that there is a thriving market waiting to be unleashed if RFPs are required in all cases, and it certainly argues against the need to make any changes to the current process employed by utilities to obtain capacity.”<sup>6</sup> Stephen Cunningham of SCE&G stated he hasn’t encountered a situation where a lack of bidder confidence diminished RFP participation and said “I have not heard when we’ve issued an RFP, when voluntary RFPs are issued, that’s there’s been any problem with getting the independent power community to bid those. It’s been suggested that if there’s not this process with rules and criteria that they can see as being fair, that in the absence of that these folks have not offered their options and had those fairly evaluated and considered”.<sup>7</sup> The example cited by Mr. Waters may indicate otherwise. LS Power understands the testimony of Mr. Waters and Mr. Cunningham pertain to differing service territories. And while LS Power cannot speak about all the inner workings of the RFP processes mentioned or for market participants in this region, one could conclude that lack of bidder confidence in the North Carolina process Mr. Waters discusses contributed in part to the poor RFP response. In North Carolina, there are no rules mandating incumbent utilities to conduct competitive solicitations featuring a transparent process with standardized evaluation criteria and independent, third-party oversight. If

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<sup>6</sup> Samuel S. Waters, Before the Public Service Commission of South Carolina, Docket No. 2005-191-E, Direct Testimony, Page 12, (September 28, 2005).

<sup>7</sup> Stephen Cunningham, Before the Public Service Commission of South Carolina, Docket No. 2005-191-E, Hearing #10732, Transcript of Testimony and Proceedings, Pages 140-141, (October 26, 2005) (“Cunningham Comments”).

potential bidders in North Carolina believed the outcome was decided at the outset of the process due to the RFP's rules, this could explain the absence of proposals. In other words, the experience of Progress in this particular instance does not demonstrate an RFP process is a flawed method of acquiring generation, but rather the execution of the cited RFP process featured flaws that diminished its efficacy. In contrast, RFP processes in states mandating competitive bidding processes that feature the aforementioned principles of transparency, product definition, evaluation, and oversight have had strong levels of participation.<sup>8</sup> These include:

- In Louisiana, Cleco's 2004 RFP for up to 645 MW received 54 bids
- In Colorado, Public Service Company of Colorado's 2005 RFP for 2,500 MW received 89 proposals representing nearly 17,000 MW
- In Georgia, the 2005 Georgia Power/Savannah Electric RFP to meet 1,200 MW of demand for 2009 received 26 proposals from 10 companies representing 8,000 MW
- In Minnesota, Northern States Power's 2001 All-Source RFP for 1,000 MW received 113 discreet proposals from 27 companies representing nearly 17,000 MW.

#### **D. COMPETITIVE PROCUREMENT IS AN EFFECTIVE TOOL FOR ALL RESOURCE TYPES.**

An RFP process should be required for the procurement of all resource types. LS Power disagrees with intervenors who claim an RFP process is not appropriate for the procurement of base load capacity. The limited track record of successful base load solicitations is not due to the inability of developers to offer firm, competitively priced bids, but rather is due to the fact that the industry, including investor owned utilities, has only recently refocused on base load development. Prior to the recent wave of proposed

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<sup>8</sup> While each of the above states' competitive bidding rules and depth of developer participation differ to some extent, LS Power suggests the Commission review the competitive acquisition rules in these states and would be happy to provide the Commission with additional information regarding these states' processes, if desired.

base load additions, it had been nearly twenty years since new base load facilities in the United States were developed. Many electric utilities have recently issued RFPs specifically for, or that at least consider, base load resources. The table below is a partial listing of recent RFPs specifically for, or that consider, base load resources that LS Power is aware of and can speak publicly to. LS Power notes that most of the solicitations were conducted in states where competitive bidding is required for the procurement of all resources or states considering such requirements.

<b>Soliciting Entity</b>	<b>Date RFP Issued</b>
Minnesota Power	October 5, 2004
Great River Energy	December 15, 2004
Cleco	January 12, 2005
Georgia Power and Savannah Electric and Power	February 24, 2005
Public Service Company of Colorado	February 25, 2005
Public Service Company of Oklahoma	September 12, 2005
Southwestern Electric Power Company	December 9, 2005
Georgia Power and Savannah Electric and Power	March 22, 2006 (Planned)
Entergy Services	April 14, 2006 (Planned)

If it is determined that a need exists for base load generation, a competitive solicitation should be held to meet that need. As with the procurement of any other resource type, consumers cannot be assured that a utility preferred base load proposal is the lowest-cost, most reliable option without testing the market to confirm this is true. Discussing her company's broadly structured RFPs, Duke Witness Janice Hager noted, "Frankly we've been pleasantly surprised at what they can do."<sup>9</sup> It is wrong of parties to assume a base load RFP could not result in satisfactory options. Ratepayers should not be restricted from the benefits of a process that considers the widest range of options

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<sup>9</sup> Janice Hager, Before the Public Service Commission of South Carolina, Docket No. 2005-191-E, Hearing #10732, Transcript of Testimony and Proceedings, Page 85, (October 26, 2005) ("Hager Comments").



simply because the resource type being solicited traditionally has not been acquired through a competitive process.

**E. A CAREFULLY DESIGNED PROCESS CAN RESULT IN SUBSTANTIAL SAVINGS AT A MINIMAL COST.**

Certain parties claim that RFPs are “expensive and time-consuming”<sup>10</sup>, and thereby impractical to use in every instance when new generation is needed. Parties also testified that designing an RFP process is “difficult”<sup>11</sup> and impairs utilities’ “flexibility”<sup>12</sup>. LS Power notes the potential savings which could be derived from an RFP potentially dwarf the expenses of running the RFP. Trimming even one to two percent from a capital-intensive baseload project which typically costs upwards of \$1 billion to develop would save ratepayers millions of dollars. Certainly these savings should support a mandatory RFP process, regardless of any perceived “difficulty” in crafting such a process. And while LS Power maintains that specific rules for an RFP process should be decided in a collaborative process, there are commonly accepted methods to allay parties’ concerns regarding the cost and duration of RFPs while preserving the benefits of an RFP process. For example, strict, binding timeframes for the RFP can ensure the process is completed in an expedited manner. Moreover, a predetermined fee on each bidder submitting a proposal in the RFP can take care of the independent evaluator’s compensation. Finally, well-crafted rules derived from a collaborative process, if worded in competitively neutral language, can include certain exceptions allowing procurement outside of an RFP process, thereby allowing utilities their desired “flexibility”.

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<sup>10</sup> Cunningham Comments at Pages 131-132.

<sup>11</sup> Cunningham Comments at Page 112.

<sup>12</sup> Hager Comments at Page 87.

#### IV. CONCLUSION

For the foregoing reasons, LS Power Associates, L.P. respectfully requests the Commission implement rulemaking procedures requiring utilities to utilize a formal RFP process for the addition any type of new generating capacity.

Dated: December 19, 2005

Respectfully submitted,

Woodward, Cothran & Herndon

A handwritten signature in black ink, reading "Darra W. Cothran". The signature is fluid and cursive, with the first name "Darra" and last name "Cothran" clearly legible. The signature is positioned above a horizontal line.

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## CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for LS Power Associates, L.P., do hereby certify that I have served a copy of the Post-Hearing Brief of LS Power Associates, L.P. via electronic transmission to the emails listed below and by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

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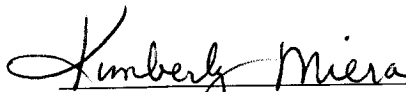
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Betty J. DeHart

SWORN to before me this

19<sup>th</sup> day of December, 2005.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 10/08/08